

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2159

Introduced by Assembly Member Cardoza

February 20, 2002

An act to ~~add Section 1203e to~~ amend Section 11165.7 of, and to add Sections 825.3, 1207.5, and 1213.7 to, the Penal Code, and to add Sections 635.3, 702.7, and 706.3 to, and to add Chapter 7 (commencing with Section 16585) to Part 4 of Division 9 of, the Welfare and Institutions Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2159, as amended, Cardoza. Children of incarcerated parents: ~~presentencing reports~~ court inquiry.

Existing law provides various services for the care of children, including foster care placement, child welfare services, and mental health services.

~~Under existing law, when a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court is required to refer the matter to a probation officer to investigate and report to the court, as specified. Under existing law, when a person is convicted of a misdemeanor, the court may refer the matter to the probation officer for an investigation and a report, as specified.~~

~~The bill would require the report filed by the probation officer with the court prior to sentencing to include a discussion of whether or not a defendant over 18 years of age has a child, what arrangements exist for the care of the child if the defendant is to be incarcerated, and the location of the child and his or her caretaker. At the option of county~~

~~board of supervisors in each county, the probation officer would be required to send the report to the child protective services agency of that county for assessment, review, and appropriate disposition, as specified.~~

~~By increasing the duties of local officials, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Existing law makes provision for various hearings including, among others, an arraignment and a trial or plea proceeding for any defendant charged with a crime, and a sentencing hearing for any defendant convicted of a crime.

Existing law also makes provision for various hearings for minors who have violated a law or ordinance, as specified, that constitutes a crime. These hearings include a detention hearing, a jurisdictional hearing, and a dispositional hearing.

Under existing law, the court may order that a defendant be incarcerated or imprisoned or that a minor be confined, pursuant to certain findings, judgments, or verdicts.

This bill would require the court to make a determination, at each stage at which the court has ordered that a defendant be incarcerated or imprisoned or a minor confined, as to whether the defendant or minor has custody of any child or children under the age of 18 years, and to inquire as to the arrangements that have been made for the proper care of that child or those children.

Existing law establishes the Child Abuse and Neglect Reporting Act (CANRA), which requires specified persons to make a report to any police department or sheriff's department, county probation department, or county welfare department whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the



mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Existing law also provides that any mandated reporter who does not make the report is guilty of a misdemeanor.

This bill would include within the definition of mandated reporter any judge of the superior court or municipal court who has jurisdiction over a defendant in a criminal action, or a minor in a juvenile delinquency proceeding, who has custody of any child under 18 years of age.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 1203e is added to the Penal Code, to~~
2 ~~read:~~
3 ~~1203e.—(a) The report filed by the probation officer with the~~
4 ~~court prior to sentencing pursuant to Section 1203 shall include a~~
5 ~~discussion of whether or not a defendant over 18 years of age has~~
6 ~~a child, what arrangements exist for the care of a defendant's child~~
7 ~~if the defendant is to be incarcerated, and the location of the child~~
8 ~~and any caretaker.~~
9 ~~(b) At the option of the county board of supervisors in each~~
10 ~~county, the probation department preparing the report shall send~~
11 ~~the section of the report required by subdivision (a) to the child~~
12 ~~protective services agency of that county for assessment, review,~~
13 ~~and appropriate disposition pursuant to Section 16504 of the~~
14 ~~Welfare and Institutions Code in order to ensure the safety,~~

1 ~~protection, and physical and emotional well-being of the child who~~
2 ~~is at risk of harm.~~

3 **SEC. 2.**— *Section 825.3 is added to the Penal Code, to read:*

4 *825.3. After arraignment, if the defendant is in custody or*
5 *remanded to custody, the court shall determine if the defendant has*
6 *custody of any child or children under the age of 18 years, and*
7 *inquire as to the arrangements made for the proper care of that*
8 *child or those children.*

9 **SEC. 2.** *Section 1207.5 is added to the Penal Code, to read:*

10 *1207.5. When a judgment upon a conviction is entered*
11 *pursuant to Section 1207, if the defendant is in custody or*
12 *remanded to custody, the court shall determine if the defendant has*
13 *custody of any child or children under the age of 18 years, and*
14 *inquire as to the arrangements made for the proper care of that*
15 *child or those children.*

16 **SEC. 3.** *Section 1213.7 is added to the Penal Code, to read:*

17 *1213.7. When a judgment has been pronounced, if the*
18 *sentence includes incarceration in county jail, or imprisonment in*
19 *state prison, the court shall determine if the defendant has custody*
20 *of any child or children under the age of 18 years, and inquire as*
21 *to the arrangements made for the proper care of that child or those*
22 *children.*

23 **SEC. 4.** *Section 11165.7 of the Penal Code is amended to read:*

24 *11165.7. (a) As used in this article, “mandated reporter” is*
25 *defined as any of the following:*

26 *(1) A teacher.*

27 *(2) An instructional aide.*

28 *(3) A teacher’s aide or teacher’s assistant employed by any*
29 *public or private school.*

30 *(4) A classified employee of any public school.*

31 *(5) An administrative officer or supervisor of child welfare and*
32 *attendance, or a certificated pupil personnel employee of any*
33 *public or private school.*

34 *(6) An administrator of a public or private day camp.*

35 *(7) An administrator or employee of a public or private youth*
36 *center, youth recreation program, or youth organization.*

37 *(8) An administrator or employee of a public or private*
38 *organization whose duties require direct contact and supervision*
39 *of children.*

1 (9) Any employee of a county office of education or the
2 California Department of Education, whose duties bring the
3 employee into contact with children on a regular basis.

4 (10) A licensee, an administrator, or an employee of a licensed
5 community care or child day care facility.

6 (11) A ~~headstart~~ *Headstart Program* teacher.

7 (12) A licensing worker or licensing evaluator employed by a
8 licensing agency as defined in Section 11165.11.

9 (13) A public assistance worker.

10 (14) An employee of a child care institution, including, but not
11 limited to, foster parents, group home personnel, and personnel of
12 residential care facilities.

13 (15) A social worker, probation officer, or parole officer.

14 (16) An employee of a school district police or security
15 department.

16 (17) Any person who is an administrator or presenter of, or a
17 counselor in, a child abuse prevention program in any public or
18 private school.

19 (18) A district attorney investigator, inspector, or family
20 support officer unless the investigator, inspector, or officer is
21 working with an attorney appointed pursuant to Section 317 of the
22 Welfare and Institutions Code to represent a minor.

23 (19) A peace officer, as defined in Chapter 4.5 (commencing
24 with Section 830) of Title 3 of Part 2, who is not otherwise
25 described in this section.

26 (20) A firefighter, except for volunteer firefighters.

27 (21) A physician, surgeon, psychiatrist, psychologist, dentist,
28 resident, intern, podiatrist, chiropractor, licensed nurse, dental
29 hygienist, optometrist, marriage, family and child counselor,
30 clinical social worker, or any other person who is currently
31 licensed under Division 2 (commencing with Section 500) of the
32 Business and Professions Code.

33 (22) Any emergency medical technician I or II, paramedic, or
34 other person certified pursuant to Division 2.5 (commencing with
35 Section 1797) of the Health and Safety Code.

36 (23) A psychological assistant registered pursuant to Section
37 2913 of the Business and Professions Code.

38 (24) A marriage, family and child therapist trainee, as defined
39 in subdivision (c) of Section 4980.03 of the Business and
40 Professions Code.

1 (25) An unlicensed marriage, family, and child therapist intern
2 registered under Section 4980.44 of the Business and Professions
3 Code.

4 (26) A state or county public health employee who treats a
5 minor for venereal disease or any other condition.

6 (27) A coroner.

7 (28) A medical examiner, or any other person who performs
8 autopsies.

9 (29) A commercial film and photographic print processor, as
10 specified in subdivision (e) of Section 11166. As used in this
11 article, “commercial film and photographic print processor”
12 means any person who develops exposed photographic film into
13 negatives, slides, or prints, or who makes prints from negatives or
14 slides, for compensation. The term includes any employee of such
15 a person; it does not include a person who develops film or makes
16 prints for a public agency.

17 (30) A child visitation monitor. As used in this article, “child
18 visitation monitor” means any person who, for financial
19 compensation, acts as monitor of a visit between a child and any
20 other person when the monitoring of that visit has been ordered by
21 a court of law.

22 (31) An animal control officer or humane society officer. For
23 the purposes of this article, the following terms have the following
24 meanings:

25 (A) “Animal control officer” means any person employed by
26 a city, county, or city and county for the purpose of enforcing
27 animal control laws or regulations.

28 (B) “Humane society officer” means any person appointed or
29 employed by a public or private entity as a humane officer who is
30 qualified pursuant to Section 14502 or 14503 of the Corporations
31 Code.

32 (32) A clergy member, as specified in subdivision (c) of
33 Section 11166. As used in this article, “clergy member” means a
34 priest, minister, rabbi, religious practitioner, or similar
35 functionary of a church, temple, or recognized denomination or
36 organization.

37 (33) Any employee of any police department, county sheriff’s
38 department, county probation department, or county welfare
39 department.

1 (34) An employee or volunteer of a Court Appointed Special
2 Advocate program, as defined in Rule 1424 of the Rules of Court.

3 (35) *A judge of the superior court or municipal court of the*
4 *state who has jurisdiction over a defendant in a criminal action,*
5 *or a minor in a proceeding pursuant to Section 602 of the Welfare*
6 *and Institutions Code, who has custody of any child under 18 years*
7 *of age.*

8 (b) Volunteers of public or private organizations whose duties
9 require direct contact and supervision of children are encouraged
10 to obtain training in the identification and reporting of child abuse.

11 (c) Training in the duties imposed by this article shall include
12 training in child abuse identification and training in child abuse
13 reporting. As part of that training, school districts shall provide to
14 all employees being trained a written copy of the reporting
15 requirements and a written disclosure of the employees'
16 confidentiality rights.

17 (d) School districts that do not train their employees specified
18 in subdivision (a) in the duties of mandated reporters under the
19 child abuse reporting laws shall report to the State Department of
20 Education the reasons why this training is not provided.

21 (e) The absence of training shall not excuse a mandated
22 reporter from the duties imposed by this article.

23 SEC. 5. *Section 635.3 is added to the Welfare and Institutions*
24 *Code, to read:*

25 635.3. *The court finds a minor to be a person described by*
26 *Section 602, if the court has ordered confinement of the minor; the*
27 *court shall determine if the minor has custody of any child or*
28 *children under the age of 18 years, and inquire as to the*
29 *arrangements made for the proper care of that child or those*
30 *children.*

31 SEC. 6. *Section 702.7 is added to the Welfare and Institutions*
32 *Code, to read:*

33 702.7. *The court finds a minor to be a person described by*
34 *Section 602, if the court has ordered confinement of the minor; the*
35 *court shall determine if the minor has custody of any child or*
36 *children under the age of 18 years, and inquire as to the*
37 *arrangements made for the proper care of that child or those*
38 *children.*

39 SEC. 7. *Section 706.3 is added to the Welfare and Institutions*
40 *Code, to read:*

1 706.3. *If the minor is to be confined pursuant to the judgment*
2 *and order of disposition at the hearing conducted pursuant to*
3 *Section 706, the court shall determine if the minor has custody of*
4 *any child or children under the age of 18 years, and inquire as to*
5 *the arrangements made for the proper care of that child or those*
6 *children.*

7 SEC. 8. Chapter 7 (commencing with Section 16585) is added
8 to Part 4 of Division 9 of the Welfare and Institutions Code, to
9 read:

10
11 CHAPTER 7. CHILDREN OF INCARCERATED PARENTS
12

13 16585. This ~~article~~ *chapter* shall be known and may be cited
14 as the Megan Mendez Act of 2002.

15 16586. The Legislature finds and declares all of the
16 following:

17 (a) An estimated 80 percent of the 11,600 women in state youth
18 and adult correctional facilities, and the approximately 10,000
19 women in county jails, are parents. Most of these women are single
20 parents who have an average of two children. More than two-thirds
21 of these women had custody of their children at the time of their
22 arrest.

23 (b) Approximately 20 percent of children whose parents are
24 arrested are present at the time of the parents' arrest. Many of these
25 children are between the ages of three and six years.

26 (c) The children of incarcerated parents may suffer from
27 separation anxiety, fear, and guilt, and may act out by withdrawing
28 or by aggressive behavior. Repeated separations as a result of their
29 parent's recidivism may aggravate these problems.

30 (d) The children of incarcerated parents are at risk for poor
31 outcomes in school, mental health and social problems, and
32 juvenile delinquency. There is increasing evidence of
33 intergenerational incarceration.

34 (e) Most jurisdictions do not request or collect family
35 information from arrested persons, nor do they have protocols in
36 place to define official roles and responsibilities for addressing the
37 needs of the children of ~~prisoners at the time of arrest or at suspects~~
38 ~~at the time of arrest or defendants at the time of sentencing.~~

39 ~~SEC. 3. Notwithstanding Section 17610 of the Government~~
40 ~~Code, if the Commission on State Mandates determines that this~~

1 ~~act contains costs mandated by the state, reimbursement to local~~
2 ~~agencies and school districts for those costs shall be made pursuant~~
3 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
4 ~~2 of the Government Code. If the statewide cost of the claim for~~
5 ~~reimbursement does not exceed one million dollars (\$1,000,000),~~
6 ~~reimbursement shall be made from the State Mandates Claims~~
7 ~~Fund.~~

8 *SEC. 9. No reimbursement is required by this act pursuant to*
9 *Section 6 of Article XIII B of the California Constitution for*
10 *certain costs that may be incurred by a local agency or school*
11 *district because in that regard this act creates a new crime or*
12 *infraction, eliminates a crime or infraction, or changes the penalty*
13 *for a crime or infraction, within the meaning of Section 17556 of*
14 *the Government Code, or changes the definition of a crime within*
15 *the meaning of Section 6 of Article XIII B of the California*
16 *Constitution.*

17 *However, notwithstanding Section 17610 of the Government*
18 *Code, if the Commission on State Mandates determines that this*
19 *act contains other costs mandated by the state, reimbursement to*
20 *local agencies and school districts for those costs shall be made*
21 *pursuant to Part 7 (commencing with Section 17500) of Division*
22 *4 of Title 2 of the Government Code. If the statewide cost of the*
23 *claim for reimbursement does not exceed one million dollars*
24 *(\$1,000,000), reimbursement shall be made from the State*
25 *Mandates Claims Fund.*